

Davis-Bacon Investigation Procedures

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Employment Standards Administration

Davis-Bacon Investigation procedures

- Reorganization Plan No. 14 of 1950
- Davis-Bacon (DB) Labor Standards Contract Stipulations
- Specific Steps in Conducting DBA/DBRA/CWHSSA Investigations
- Conclusion of Investigation
- Report Writing
- The Hearing Process

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Reorganization Plan No. 14 of 1950

- DOL Functions/Responsibilities
 - Determining “prevailing wages”
 - Issuing regulations and standards to be observed by contracting agencies
 - Perform oversight function and has independent authority to conduct investigations

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Reorganization Plan No. 14 of 1950

- Contracting agencies have day to day enforcement responsibility for:
 - Contract Stipulations
 - Wage Determinations
 - WH-1321 Poster
 - Reviewing certified payrolls
 - Employee interviews and investigations
 - Forwarding refusal-to-pay and/or debarment consideration cases to WHD for appropriate action
 - Enforcement reports

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Davis-Bacon Labor Standards/Contract Stipulations

- The term "labor standards" means the requirements of:
 - The Davis-Bacon Act
 - The Contract Work Hours and Safety Standards Act
 - The Copeland Act
 - Prevailing wage provisions of the Davis-Bacon and "related Acts"
 - Regulations, 29 CFR 1, 3, and 5

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Davis-Bacon Labor Standards (29 CFR 5.5)

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|-------------------------------------|---|
| ■ Minimum wages (MW's) | ■ Submission of certified payroll records |
| ■ Withholding | ■ Apprentices |
| ■ Maintaining basic payroll records | ■ Trainees |

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Davis-Bacon Labor Standards

- Copeland Act (CA) compliance
- Subcontracts
- Contract termination and debarment
- Rulings and interpretations
- Disputes
- Certification of eligibility

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Preliminary Steps in Conducting Investigations

- Obtain the following information:
 - Copy of labor standards clauses in contract
 - Copy of Davis-Bacon WD in contract, including any instructions for multiple schedules
 - Copies of certified payrolls
 - Employer identification number

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The Investigation Process

- Initiate contact with employer
- Examine certified payrolls
- Examine basic payroll records

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The Investigation Process (Cont'd.)

- Check for compliance with apprenticeship and/or trainee requirements
- Determine if a conformance is necessary

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Employee Interviews

- Are essential to the investigation
- Information provided is confidential
- Interview statements should contain:
 - Place and date of interview
 - Name and address of employer/employee
 - Employment status and classification
 - Alleged violations

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Determining Compliance

- Determine compliance with prevailing wages, including FB's
- Determine compliance with CWHSSA
- Compute any back wages and liquidated damages

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Computing Liquidated Damages under CWHSSA

Liquidated damages are computed at \$10 per day per CWHSSA violation. Example:

	S	M	T	W	T	F	S	TOTALS
Regular Time	0	10	12	13	9	8	3	55

15 weekly hours of overtime were worked on three calendar days (Thursday, Friday, Saturday) without the payment of overtime. Liquidated damages computed @ \$30.

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Withholding of Funds

- In refusal-to-pay cases, contracting agency can withhold funds to cover back wages
- Contracting agency can withhold funds from other contracts which have same prime contractor (cross-withholding)
- Contracting agency should immediately notify WHD if contractor may be filing for bankruptcy

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Computing Back Wages (40-hour workweek)

Contractor employs an Electrician on the site of the work 40 hours a week. WD calls for a prevailing wage of \$14.50 (\$12 + \$2.50 in FB's). Employee paid \$13 (\$10.00 plus \$3.00 in FB's), which is the WD prevailing wage for Painters.

Prevailing Wage	\$14.50	X 40 hours =	\$587.00
Employee paid	\$13.00	X 40 hours =	\$527.00
Back wages per employee			\$ 60.00

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Conclusion of Investigation

- Final Conference Procedure
 - Inform contractor of investigation findings
 - Detail steps to eliminate violations
 - Consider additional evidence that may impact on findings (e.g., conformance)
 - Request payment of back wages and any liquidated damages under CWHSSA
- Contact WHD if no agreement

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Debarment

- Occurs when a contractor is declared *ineligible* for future contracts due to:
 - Violations of the DBA in disregard of its obligations to employees or subcontractors
 - Aggravated or willful violations under the labor standards provisions of related Acts
- Period of ineligibility is 3 years for DBA and up to 3 years for DBRA

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Debarment Criteria

- Debarment is considered when a contractor has:
 - Submitted falsified certified payrolls
 - Required "kickbacks" of wages or back wages
 - Committed repeat violations

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Hearing Process (29 CFR Parts 6 and 7)

- Refusal to pay cases are resolved pursuant to 29 CFR 5.11
 - If factual issues in dispute, WHD notifies contractor of findings and offers opportunity to request a hearing before an Administrative Law Judge (ALJ)
 - If only questions of law in dispute, WHD issues ruling letter that may be appealed to DOL's Administrative Review Board (ARB)
- If debarment action initiated, contractor may request a hearing pursuant to 29 CFR 5.12

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Administrative Review Board

- Members appointed by the Secretary of Labor
- Hears appeals of ALJ decisions
- Acts on petitions to review final rulings of WHD Administrator on coverage interpretations, and WD matters
- Appeals may be in the form of an oral hearing in Washington, D.C., but typically are by review of record in closed session

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